

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

**FRED HANEY, MARSHA MERRILL,  
SYLVIA RAUSCH, STEPHEN SWENSON,  
and ALAN WOOTEN, Individually and on  
Behalf of All Others Similarly Situated,**

**Plaintiffs,**

**vs.**

**GENWORTH LIFE INSURANCE  
COMPANY and GENWORTH LIFE  
INSURANCE COMPANY OF NEW  
YORK,**

**Defendants.**

**Civil Action No. 3:22-cv-00055-REP**

**CLASS ACTION**

**JOINT RESPONSE TO GARY DAVIS’S MOTION FOR LEAVE TO CALL KATHRYN  
DIMIDUK AS A WITNESS BY WAY OF ZOOM AT THE FINAL APPROVAL  
HEARING ON DECEMBER 13, 2022**

Pursuant to the Court’s December 6, 2022 Order (ECF No. 114), Named Plaintiffs and Defendants (collectively, the “Parties”) jointly submit this response to Gary Davis’s Motion for Leave to Call Kathryn Dimiduk as a Witness by way of Zoom at the Final Approval Hearing on December 13, 2022 (ECF No. 113).

At the Final Approval Hearing, Mr. Davis raised an objection that he received a rate action letter *after* the Court had preliminarily approved the Settlement, but *before* he received Notice of that proposed Settlement. The Court thereafter ordered the Parties to submit further briefing *on that issue*.<sup>1</sup> In his Supplemental Responsive Brief, however, Mr. Davis purports to

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<sup>1</sup> The Court Order required the Parties and Mr. Davis to submit supplemental briefs, “[t]o resolve the objection regarding rate increase letters between preliminary approval of the settlement agreement and the mailing of notice made by Mr. Gary M. Davis, esquire, on behalf of himself and Lorrianne Friedlander....” ECF No 98, at ¶1

expand the scope of this objection (which he advanced for the first time not in his written objection (ECF No. 61) but rather at the Final Approval Hearing) to argue that Policyholders who received a rate action notice *at any time* after this lawsuit was first filed were potentially harmed by not having notice of a tentative Settlement (that had not even been fully negotiated or signed by the Parties until March 31, 2022 and not preliminarily approved by the Court until May 2, 2022). (ECF No. 110.) The Parties will address Mr. Davis's purported expanded objection in their reply filing due tomorrow, December 8. (*See* ECF No. 98 ¶ 1(d).)

Now, Mr. Davis also asks the Court to allow him to present the testimony of Kathryn Dimiduk, a Class Member who was sent a rate action letter one month *before* this Court granted preliminary approval of the Settlement. (*See* ECF No. 102 (Ms. Dimiduk's Supplemental Objection) at 1 (referencing Ms. Dimiduk's April 1, 2022 rate action letter) *compared to* ECF No. 31 (May 2, 2022 Preliminary Approval Order).) The Parties do not believe that Ms. Dimiduk's testimony is relevant to Mr. Davis's purported objection or within the scope of the issue framed by the Court's Order. (*See* ECF No. 98 ¶ 1(b)-(d) (framing the issue as concerning Class Members who received rate action letters between Preliminary Approval and Class Notice).)

Nevertheless, the Parties do not oppose Ms. Dimiduk appearing at the December 13, 2022 Hearing via Zoom, nor do they oppose Mr. Davis offering her testimony for the limited purpose of supporting his objection. The Parties do request that the Court require Mr. Davis, by December 9, 2022, to inform the Parties of (a) what testimony Ms. Dimiduk is expected to offer at the Final Approval Hearing, (b) whether Mr. Davis (who is a Pennsylvania attorney) represents Ms. Dimiduk, and (c) whether any separate or additional counsel will be representing Mr. Davis or Ms. Dimiduk in connection with their objections. The Parties respectfully request

this information so that they can be adequately prepared for Ms. Dimiduk's testimony that Mr. Davis will elicit. If Mr. Davis's request is granted, the Parties also reserve the right to cross-examine Ms. Dimiduk at the Final Approval Hearing.

DATED: December 7, 2022

Respectfully submitted,

s/ Jonathan M. Petty

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DATED: December 7, 2022

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**CERTIFICATE OF SERVICE**

I certify that on the 7th day of December 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send a notification of such filing to all counsel of record. I also caused the foregoing to be sent by email and overnight delivery to Mr. Davis at the following address:

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